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IN THE

Supreme Court of the United States

October Term, 1967

No. 70

ALITALIA-LINEE AEREE ITALIANE, S.P.A.,

Petitioner,

—v.—

JOHN LIEU, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONSE IN OPPOSITION TO MOTION OF INTERNATIONAL AIR TRANSPORT ASSOCIATION, *AMICUS CURIAE*, FOR LEAVE TO FILE BRIEF IN SUPPORT OF PETITION FOR REHEARING

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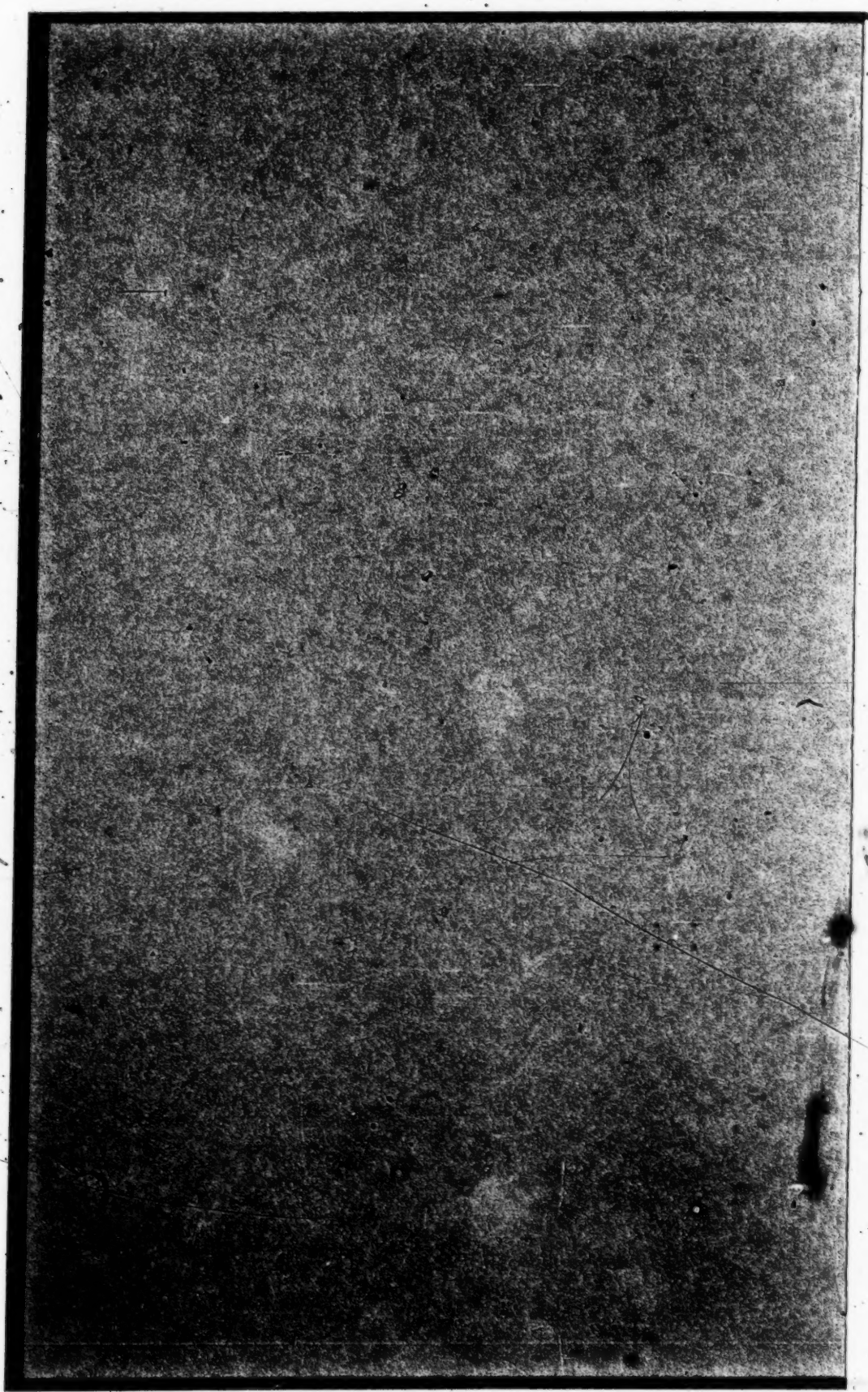

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Preliminary Note

It is respectfully submitted that the within Motion by the International Air Transport Association (IATA) and its submission of the brief in support of Alitalia's petition for rehearing, is improper. There is no provision in the Rules of this Court for such a proceeding. The danger is that the door may be opened to a co-ordinated effort by parties having the same ultimate interest to present a multiplicity of arguments.

Without waiving their objections to this unusual procedure employed by IATA, plaintiffs-respondents interpose the following response:

At the outset it should be noted that no Memorandum or Opinion was handed down in this Court's decision. Accordingly any assumptions as to the reasoning or motivations of any member of the Court in making his decision are entirely speculative and improper. Correspondingly, IATA's post-decision challenge to its erected assumptions hardly merits serious attention.

In any event, the IATA brief is a repetition of the arguments previously made by Alitalia and its air-carrier adherents orally and in their voluminous briefs. Any claim that the matter was not fully explored exhaustively and in depth by all concerned is belied by the numerous briefs and the many preliminary motions, all of which received the Court's close attention. It is doubtful that this case could have been more fully and exhaustively covered, including as it did, briefing of the complete legislative history of the Warsaw Convention, the Warsaw Conference Minutes, and its background in relation to industry conditions, industry growth and development since its initial consideration, apart from a plethora of citations. In fact, Alitalia and its industry adherents also exhaustively briefed and discussed the Hague Protocol and its implications. All of this had been reviewed by the Court of Appeals, as well as by this Court.

In addition, the United States Government, which had been requested by this Court to state its views, filed a brief thoroughly reviewing the Convention and carefully weighing the implications of the *Lisi* decision, and as a matter of policy, wholly approving the decision without reservation. The Civil Aeronautics Board also filed a brief which

in essence supported the *Lisi* decision and the Government's brief while demolishing the inaccurate statements of the Alitalia group with respect to the Civil Aeronautics Board's attitude as to the adequacy of the Warsaw tickets. It is also undisputed that the unjust and discriminatory nature of the Convention is widely conceded.

As the United States has stated through the Solicitor General concerning the Court of Appeals *Lisi* decision: "It also represents, in our view a proper performance of the judicial duty of the courts of contracting states to implement the broad provisions of the Convention" (U.S. Brief, p. 7). The briefs of the United States Government and the Civil Aeronautics Board obviously also represent the policy of the United States Government with respect to the Warsaw Convention.

IATA again assumes the familiar "dire consequences" stance. This case has been disposed of on its own record. As to the few other Warsaw actions that may be pending, there is nothing in this record as to the number there are, or the particular facts or type of ticket involved in each case. The international ticket has been continually revised in the past and concededly will be in the future. It is proper to dispose of this case on its own merits without regard to hypothetical other cases that are not before the Court.

The inference that by the denial of certiorari in *Berguido* this Court has left a conflict in the second and third circuits is another transparently desperate effort to find a basis for rehearing. There was no decision by the third circuit in *Berguido* on the issues involved herein. The only resemblance is that both cases arose out of separate Warsaw crashes. In *Berguido* there was no ticket before the Courts below, except a segment flight coupon, nor was there

any ticket legibility issue or ticket sufficiency issue raised there, nor was there any decision by the third circuit on this point, accordingly there was no similarity of facts and issues with *Lisi*. It may be noted that the Motion of the *Berguido* petitioner before this Court to consolidate *Lisi* with *Berguido*, in an effort to identify with *Lisi* had been strenuously opposed in a brief filed by these plaintiffs-respondents on the afore-mentioned grounds. The Motion to consolidate was not granted.

In short, nothing new has been added to the familiar arguments of the Alitalia group except to again indicate their dissatisfaction with the American judicial process.

WHEREFORE, it respectfully submitted that the Motion be denied.

Respectfully submitted,

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